

**STATE OF INDIANA  
BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION**

<b>IN THE MATTER OF</b>	)	
<b>THE PERMIT OF</b>	)	
	)	
<b>WAL-MART STORES EAST, LP</b>	)	
<b>d/b/a WAL-MART # 1157</b>	)	<b>PERMIT NO. DL40-23860</b>
<b>2110 N State Highway #3</b>	)	
<b>North Vernon, IN 47265</b>	)	
 <b>Applicant.</b>	 )	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I.  
BACKGROUND OF THE CASE**

Wal-Mart Stores East, LP, d/b/a Wal-Mart #1157, located at 2110 N. State Highway #3, North Vernon, Indiana 47625, permit number DL 40-23860 (the “Applicant” or “Wal-Mart”), is the Applicant for a type 208<sup>1</sup> Alcohol and Tobacco Commission (the “Commission” or the “ATC”) permit. The application was assigned to the Alcoholic Beverage Board of Jennings County (“Local Board”). The Local Board held a hearing on April 21, 2008, and voted 3-1 to deny this permit (“LB Hearing”). On May 7, 2008 the Commission voted to deny the application.

On June 3, 2008, the Applicant timely filed Petitioner’s Request for Administrative Review and Request to Appeal Commission’s Denial of Application. Remonstrators Eric Kopitzke (“Kopitzke”) and Frances Gwin (“Gwin”) each filed Petitions for Intervention pursuant to 905 IAC 1-36-2. The Hearing Judge denied those petitions in separate orders dated June 9, 2008. Kopitzke and Gwen sought a review of the denials of their Petitions for Intervention and also asked for a change of Hearing Judge (Judge U- Jung Choe). After

reviewing the denials, the ATC upheld the decision to deny the Petitions for Intervention and denied the request for change of Hearing Judge.

On October 7, 2008 Kopitzke filed a Verified Complaint for Declaratory Judgment and Judicial Review in the Marion Superior Court asking the court to overturn the ATC's decision to deny his Petition for Intervention and request for a change of Hearing Judge. On February 22, 2009, Marion Superior Judge Hanley entered a final judgment against Kopitzke and granted Wal-Mart and the ATC judgment as a matter of law because Kopitzke failed to comply with IC 4-21.5-5-13 and timely file a certified copy of the ATC record.

The matter was set for hearing on June 23, 2009 before Hearing Judge E. Edward Dunsmore ("Hearing Judge") and at that time, witnesses were sworn, evidence was heard, and the matter was taken under advisement (ATC Hearing). The Hearing judge also took judicial notice of the entire contents of the file related to this case ("ATC File"). Having been duly advised of the facts and law at issue, the Hearing Judge now submits these Findings of Fact and Conclusions of Law to the Commission for its consideration.

## **II. EVIDENCE BEFORE THE LOCAL BOARD**

- A. The following individuals testified before the Local Board in favor of the Applicant in this cause:
  - 1. Alex C. Intermill, attorney for the Applicant;
  - 2. Jill Richey, Wal-Mart Store Manager;
  - 3. Melissa Barnes, Wal-Mart employee; and,
  - 4. George Hazor, Wal-Mart employee.
  
- B. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:
  - 1. Manager's Statement by Jill Richey, Store Manager, April 21, 2008;
  - 2. Exhibit 1 – Affidavit of Compliance Regarding Notice Posting, April 10, 2008;
  - 3. Exhibit 2 – Property Tax Clearance Schedule-Form No. 1, January 15, 2008;
  - 4. Exhibit 3 – Petitions in Support of the Applicant containing 819 customer signatures, with 88% in favor of the application;
  - 5. Exhibit 4 – Alcoholic Beverage Signage, "Wal-Mart Adheres to the Following State and Federal Laws:" English version;
  - 6. Exhibit 5 – Indiana Community Impact Statement;
  - 7. Exhibit 6 – Wal-Mart Fact Sheet.

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<sup>1</sup> Liquor, beer and wine (drug store) dealer located in an incorporated area.

- C. The following individuals testified before the Local Board against the Applicant in this cause:
1. Jim Terry, Senior Pastor of the Wesleyan Church;
  2. Sarah Landers, community member;
  3. John Metzger, Nazarene Church member;
  4. Frances Gwin, North Vernon Senior Housing representative;
  5. James Kiln, Children's Coalition of Indiana;
  6. James Luster, Jennings County Drug and Alcohol Task Force member;
  7. Kylie Shaw, Jennings County Drug and Alcohol Task Force member;
  8. Steve Hoppett, Jennings County Sheriff;
  9. Erich Kopitzke, local community member and package liquor store owner;
  10. Terry Zorof, member of Wesleyan Church and Jennings County High School student.
- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:
1. An unmarked exhibit in the Local Board ("LB") file consisting of 12 pages and containing a total of 153 signatures in opposition to the granting of the permit.

### **III. EVIDENCE BEFORE THE COMMISSION**

- A. Wal-Mart attended the ATC Hearing with its counsel, Lisa McKinney Goldner, Esq. and Alex C. Intermill, Esq., and five witnesses whose testimony is addressed below. Remonstrator, Erich Kopitzke (not an intervening remonstrator), attended the ATC Hearing with his counsel, Michael L. Rogers, and four witnesses whose testimony is addressed below.
- B. Official notice was taken of the ATC file for this matter.
- C. The following testimony was offered at the ATC Hearing in favor of Wal-Mart:
1. Jill Richey, Store Manager for Wal-Mart, testified she has twenty-one years of experience with Wal-Mart and has served as manager of Wal-Mart for approximately 2 ½ years. Ms. Richey is familiar with the Application, and to the best of her knowledge, the information contained in the Application and the information contained in her Manager's Statement, which was submitted at the LB Hearing, remains correct and accurate. Wal-Mart is qualified under Indiana law to sell beer, wine, and liquor. Wal-Mart's customers regularly ask that

Wal-Mart sell alcoholic beverages in addition to the grocery and drug store items currently sold. Wal-Mart desires the Permit to offer one-stop shopping and convenience to its customers.

Prior to the ATC Hearing, Wal-Mart conducted two separate polls, one before the LB Hearing and one before the ATC Hearing. The first poll sampled over 800 customers who were at least twenty-one years old and approximately 88% of those polled were in favor of the Permit. In the more recent poll, more than 80% of approximately 1148 Wal-Mart customers over the age of twenty-one were in favor of the Permit. In addition, approximately forty-five Wal-Mart employees, including managers, associates, and the pharmacist, signed affidavits expressing their support of the Application.

Wal-Mart has continued to implement extensive training measures for all of its associates to ensure compliance with alcoholic beverage laws. Cash registers are equipped with security software that requires the cashier to enter the birth date of any customer who appears younger than forty. In addition, the registers will not allow the sale of alcohol on prohibited days or during prohibited hours, and if a cashier is under the age of nineteen, the register will not allow the cashier to complete the sale of alcohol. Wal-Mart has a zero-tolerance policy with automatic termination for violating an alcoholic beverage law. Customer Service Managers (“CSMs”) oversee the checkout stations and cashiers at the front of the store and will complete the sale of alcohol for cashiers who are under nineteen years old. Each Wal-Mart cashier has taken and passed with 100% score an online computer-based training course concerning alcohol sales.

Wal-Mart has experienced minimal problems with theft, due in large part to its security system, which includes video surveillance and security software at the cash registers. Wal-Mart also has an Asset Protection Coordinator that aids in security for the store. Wal-Mart associates will also deter theft by monitoring the aisle in which alcoholic beverages are shelved and implementing the “10-Foot Rule” which provides that associates are to make eye contact and greet

every customer within ten feet of the associate. The location of the alcohol at the front of the store should also assist in monitoring of the aisle and deterring theft. Ms. Richey testified that vendors stock the alcoholic beverages.

Wal-Mart is a valuable member of the local community as an employer, taxpayer, and generous contributor to charity groups and non-profit activities. Ms. Richey testified that there has been a decrease in population in Jennings County.

Ms. Richey testified that there is a need and desire for the Permit and Wal-Mart is a store of good repute in the community that will be a responsible outlet for the sale of alcohol. Ms. Richey testified that Wal-Mart will be: a) the best secure location for citizens to buy alcohol, b) the most convenient place for citizens to buy alcohol and c) a one-stop shopping source for customers. Ms. Richey testified that as to “necessity”, the Jennings County draws customers from three other counties and that, if allowed to sell alcohol, this store would attract customers to other local businesses and help create more local revenue for Jennings County.

2. Brent Waldo, Assistant Store Manager for Wal-Mart, has nine years of experience at Wal-Mart. Mr. Waldo believes that due to Wal-Mart’s effective training and security, Wal-Mart will be a more secure outlet for the sale of alcohol than most other outlets.

Customers very often ask Mr. Waldo if Wal-Mart sells alcohol. While Mr. Waldo does not drink and is not personally in favor of alcohol, he testified he is in favor of the Permit because Wal-Mart has the safeguards necessary to provide a safe location for the sale of alcohol.

Although some cashiers are under twenty-one years of age, the security systems in place – e.g., cash register software requiring the entering of the customer’s birth date – will counter any pressure that an under age cashier may feel to sell alcohol to under age customers. Also, cashiers under twenty-one years old will

not feel any more pressure to sell to under age customers than cashiers who are over twenty-one. Studies show that a very small percentage (7%) of youth obtain alcohol from retailers who do not check identification. The majority get their alcohol from family or friends.

3. Melissa Barnes, Expanded Foods Department Manager for Wal-Mart, testified that she has worked for Wal-Mart for approximately nine years. Ms. Barnes manages the grocery section of the store, which will include the alcohol aisle. The alcohol aisle will contain a limited selection of products with approximately eight feet of shelving for beer (two feet of which will be for storage) and two feet of shelving for wine.

Ms. Barnes will ensure that each associate she manages will receive proper training concerning alcohol, which will include computer training and training offered by Indiana Excise officers.

People frequently ask Ms. Barnes if Wal-Mart sells alcohol.

Ms. Barnes is personally in favor of the Permit because it will provide the one-stop-shopping option for those customers who are not comfortable with going to a package liquor store.

4. Robert Cox, Customer Service Manager (“CSM”) for Wal-Mart, has been employed at Wal-Mart for approximately seven years. He testified to his duties as a CSM which include assisting cashiers under nineteen years old with the sale of alcohol. Each register is programmed to identify and prohibit cashiers who are under nineteen from selling alcohol. The registers will not allow the sale of alcohol during prohibited days or times. The Asset Protection Coordinator will investigate any suspected by-pass of the cash register security program or violation of alcohol policies and laws.

Mr. Cox testified that customers ask him about whether Wal-Mart sells alcohol every day. He is also personally in favor of the permit to facilitate one-stop shopping.

5. Betty Irwin, Cashier for Wal-Mart, has worked for Wal-Mart for approximately twenty-one years. She testified that she was in charge of gathering Wal-Mart customer signatures on both sets of petitions assembled by Wal-Mart concerning the Permit. When offering a customer the opportunity to sign the petition, Ms. Irwin testified that she would explain that they could sign for or against the Permit. If a person looked under twenty-one years old, Ms. Irwin would require identification before allowing the customer to sign. During the customer poll before the ATC Hearing, four pages of blank petitions were taken from the store without Wal-Mart's consent and returned with all signatures indicating opposition to the Permit. Ms. Irwin believes at least some of the petitions were taken to the Nazarene Church. There is no way to know whether the people who signed these four pages were over twenty-one. Even with these four pages, the second set of petitions showed more than 80% of Wal-Mart customers in favor of the Permit.
- D. The following exhibits were admitted as part of the ATC Hearing record as evidence offered by Wal-Mart in favor of issuing the Permit:
1. Manager's Statement of Jill Richey. (Exhibit A).
  2. Additional petitions collected by Wal-Mart prior to the ATC Hearing with approximately 1148 Wal-Mart customer signatures with more than 80% in favor of the Permit. (Exhibit B).
  3. Additional petitions collected by Wal-Mart with four pages tabbed to indicate petition sheets that were taken from the store without Wal-Mart's consent. (Exhibit B-1).

4. Affidavits of Wal-Mart managers, associates, and pharmacist indicating support for the Permit. (Exhibit C).
5. Wal-Mart corporate document showing each cashier has taken and passed with a score of 100% a computer-based learning test concerning the sale of alcohol. (Exhibit D).
6. Statistics showing community grants given by Wal-Mart in 2008 to local non-profit organizations. (Exhibit E).
7. Century Council Report showing that 65% of youth who drink get alcohol from family and friends, as opposed to only 7% who obtained alcohol from retail outlets that failed to check identification. (Exhibit F).
8. Indiana Prevention and Resource Center report showing decreasing alcohol use among Indiana students from 1993 to 2008. (Exhibit G).
9. ATC document showing results of Indiana Excise Police Survey for Alcohol Compliance for selling to minors indicating drug stores had the second lowest percentage of non-compliance and package liquor stores and restaurants with the highest rates of non-compliance. (Exhibit H).

E. The following testimony was offered at the ATC Hearing in opposition to Wal-Mart in this cause:

1. James Webster, Chief – North Vernon Police Department and Vice President of the Jennings County Drug and Alcohol Task Force (“Task Force”), testified that he has fifteen years on the police force, but was testifying as the Vice President of the Task Force. Mr. Webster believes there are currently enough outlets for alcohol in North Vernon and that additional outlets are unnecessary. Mr. Webster also testified on cross-examination concerning a statistical study published by the Indiana Prevention and Resource Center which showed a decrease in the number of students in Indiana using alcohol from 1993 to 2008.



2. Jerry Shepherd, Jennings County Deputy Sheriff, testified that he is opposed to the Permit because he believes there are already enough outlets for alcohol in the county and there is no need for another point of sale. Deputy Shepherd also said alcohol has been a problem for law enforcement officials in the county with at least 75% of the Sheriff's Department's calls and arrests being alcohol-related. The Sheriff's Department does not receive many calls to Wal-Mart.
3. Erich Kopitzke, a 30-year resident of North Vernon, an owner of a local package liquor store and auto dealership, testified that he had once relinquished an alcoholic beverage permit to the ATC because he believed there were already enough outlets for the sale of alcohol in the community. Kopitzke also testified to the decrease in population in Jennings County and an increase in the unemployment rate in the county. He also testified to the number of all types of ATC permits for the sale of alcohol in North Vernon and the City of Vernon. Kopitzke estimated that Wal-Mart is one to 1.5 miles from his package liquor store. Kopitzke offered evidence indicating that residents of Jennings County spend considerably less money on alcohol than the residents of other counties. Kopitzke testified that due to: a) the population decline (even after an annexation), b) the fact that approximately 1/3 of the population of the city is under 21 years of age, c) there are approximately 35 alcohol licenses in Jennings County already, and d) there is no growing demand for alcohol in Jennings County, that there is no need for another permit for Jennings County.

Kopitzke admitted that he had an interest in the success of his package liquor store and that if Wal-Mart sells beer and wine at a lower price, it would negatively impact his store. Kopitzke also believes that selling beer and wine for lower prices is not good for the community because it could result in the loss of jobs.

Kopitzke testified regarding an on-line poll conducted by the local newspaper that showed 56% of the people taking the poll were against the permit.

Kopitzke admitted that there was no way to tell how many people took the poll or whether a single person could have taken the poll more than once or if they were over twenty-one years old.

Kopitzke stated that he believed the LB was correct in its decision to vote against the Permit, but he believes that Wal-Mart has been able to obtain permits in other communities irrespective of the LB vote. He questions why we have Local Boards if their votes don't mean anything. He admits that if the Local Board is provided substantial evidence to issue a permit and does not grant it, it has not acted in accordance with state law.

4. Lowell Thomas, LB member, testified that he voted against the Permit at the LB Hearing. He also stated that he based his vote on "most of the evidence" offered at the LB Hearing. Thomas had additional questions concerning Wal-Mart's security measures. He did not list his reasons for voting against the Permit on the LB voting sheet.

Thomas admitted that before he voted at the LB Hearing, he asked another LB member, Robert Curry, how he was going to vote. After Curry indicated he would vote "no," Thomas also voted "no." Thomas, however, stated that he only asked Curry out of "curiosity" and that Curry's answer did not affect his vote.

- F. The following exhibits were offered at the ATC Hearing by Kopitzke in opposition of issuing the Permit and admitted by the Hearing Judge:

1. Binder containing several documents submitted at the LB Hearing and new letters from at least seven community members opposing the Permit. (Remonstrator's Exhibit 1). Remonstrator's Exhibit 1 consisted of 13 tabs labeled as follows:
  - a. REMONSTRATOR: Consisting of 5 pages.
  - b. LOCAL BOARD: Consisting of 5 pages.
  - c. NEED: Consisting of 6 pages.

- d. CONSUMPTION: Consisting of 4 pages.
  - e. LOCAL ECONOMY: Consisting of 9 pages.
  - f. POPULATION: Consisting of 11 pages.
  - g. PETITIONS: Consisting of 14 pages.
  - h. LOCAL SURVEY: Consisting of 1 page.
  - i. COMMUNITY LETTERS: Consisting of 12 pages.
  - j. SURVEY: Consisting of 4 pages.
  - k. ID POLICY: Consisting of 1 page.
  - l. OTHER WAL-MART PERMITS: Consisting of 26 pages.
2. Map showing locations of all ATC permits for the sale of alcohol in North Vernon and Vernon, Indiana. (Remonstrator's Exhibit 2). Note: This is a large exhibit. A photograph of it has been marked as Remonstrator's Exhibit 2 and placed in the ATC file. The original exhibit is in the ATC office.

### III. FINDINGS OF FACT

1. Wal-Mart Stores East, LP d/b/a Wal-Mart No. 1157 is the applicant for the Type 208 ATC permit No. DL 40-23860. (ATC File).
2. The Applicant meets the qualifications to hold a permit pursuant to IC 7.1-3-4-2, IC 7.1-3-5-2, IC 7.1-3-10-2, IC 7.1-3-15-2, and 905 IAC 1-27-1.
3. None of the remonstrators at the LB Hearing who spoke against Wal-Mart showed they would be personally aggrieved or adversely affected by the issuance of the Permit. (LB Hearing, ATC Hearing).
4. Nineteen (19) people signed as remonstrators at the LB hearing against the issuance of the permit. Of those, ten (10) people testified at the LB hearing. A petition containing 153 signatures against the permit was submitted at the LB hearing. At the ATC hearing remonstrators presented evidence to indicate that there is no need or desire in the North Vernon/Vernon community for the permit by submitting petitions containing 188 signatures (which includes the 153 signatures submitted at the LB hearing) and approximately eight (8) letters opposing the issuance of the permit (which includes two (2) letters from LB

members). Four (4) people testified in opposition to the permit at the ATC hearing, including one (1) LB member. (LB Hearing; ATC Hearing; ATC File).

5. Twelve (12) people signed as persons in favor of the issuance of the permit at the LB hearing. Of those, four (4) people testified at the LB hearing. A petition containing 819 signatures of which 88% were in favor of the permit was submitted by the Applicant at the LB hearing. At the ATC hearing the Applicant submitted petitions containing 1148 signatures (which includes the 819 signatures submitted at the LB hearing) of which 80% were in favor of the permit issuance as well as 30 affidavits of Wal-Mart employees in favor of the permit. Five (5) people testified in favor of the permit issuance at the ATC hearing. (LB Hearing; ATC Hearing; ATC File).
6. Wal-Mart has extensive security measures to deter and prevent theft of alcohol and the sale of alcohol to minors. In addition, Wal-Mart's associates are thoroughly trained to avoid problems with theft and the sale of alcoholic beverages to minors. (LB Hearing, ATC Hearing).
7. No persons were found to qualify for Intervening Remonstrator status as defined by 905 IAC 1-36-2.
8. Based on the petitions and affidavits submitted by Wal-Mart, the petitions and letters submitted by the remonstrators, the online newspaper poll, testimony regarding customer inquiries, and the availability of Type 208 permits allowed under the quota for Jennings County, the weight of the evidence indicates that there is a need and desire for the Permit. (LB Hearing, ATC Hearing).
9. The Applicant has submitted substantial evidence that it is qualified to hold a Type 208 permit. (LB Hearing; ATC Hearing).
10. The Permit is not being placed within two hundred (200) feet of a church and/or school. (LB Hearing).

11. The Permit is being placed in a commercial location and is not being placed in a residential area. (LB Hearing, ATC Hearing).
12. The ATC has determined in a recent study that retail outlets such as Wal-Mart have relatively few incidents of selling alcohol to minors compared to package liquor stores and restaurants. (ATC Hearing).
13. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

#### IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to IC 7.1-1-2-2 and IC 7.1-2-3-9.
2. The permit application was properly submitted pursuant to IC 7.1-3-1-4.
3. The Commission is authorized to act upon proper application. *Id.*
4. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of the proceedings and exhibits before the local board. 905 IAC 1-36-7(a).
5. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the Commission, including a public hearing and a review of the record and documents in the Commission file. IC 7.1-3-19-11(a); 905 IAC 1-36-7(a); 905 IAC 1-37-11(e)(2); *see also* IC 4-21.5-3-27(d).
6. Evidence at the hearing was received in accordance with the Indiana Administrative Code and the Commission's rules. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceedings. 905 IAC 1-37-119(e)(2); IC 4-21.5-3-27(d).

7. The Applicant is a fit and proper applicant, has maintained a reputation for decency and law obedience and is well qualified to hold an alcoholic beverage permit under Indiana Law. 905 IAC 1-27-1; IC 7.1-3-9-10.
8. Wal-Mart is not disqualified from holding an ATC permit. IC 7.1-3-4-2; IC 7.1-3-4-2; IC 7.1-3-15-2.
9. The ATC may consider both a need and desire for the permit in determining whether a permit should be issued in a particular matter. 905 IAC 1-27-4.
10. In determining whether to issue a permit, the Commission shall investigate the desirability of the permit in regard to the potential geographical location of said permit. In making this determination, the commission may consider, *but is not limited to the following factors*: 905 IAC 1-27-4.
  - a) The need for such services at the location of the permit.
  - b) The desire of the neighborhood or the community to receive such services.
  - c) Impact of such services on other business in the neighborhood or community.
  - d) Impact of such services on the neighborhood or community. *Id.*
11. A determination of whether there exists a need and desire for the services at the location in question turns on the facts of each case. *Id.*
12. Where an applicant shows that customers would be willing to purchase alcoholic beverages if they were available for sale, such evidence constitutes a desire to receive such services at that location. 905-1-27-4.
13. There is a need for a 208 permit at the Applicant's location. LB Hearing; ATC Hearing; ATC File; 905 IAC 1-27-4.
14. The testimony of the Local Board members who supplied letters and affidavits and who appeared at the ATC Hearing will not be considered since they are not "remonstrators". 905 IAC 1-36-2(a) provides, in relevant part: "remonstrator means a person who appeared, personally or by counsel, as a remonstrator

against the application at the local board hearing and identified himself to the local board, stating his name and address or telephone number to the board at the hearing.” *See also* Local Board Hand Book, p.8, 2007. Further, 905 IAC 1-36-7(a) provides, in relevant part regarding the conduct of hearings: “The commission shall hear additional evidence from the applicant and the remonstrators or intervening remonstrators, if any.” *Id.*

15. The ATC may reverse the LB’s action in denying the application of a permit if it finds that the LB’s decision was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (b) contrary to a constitutional right, power, privilege, or immunity; (c) in excess of or contrary to, statutory jurisdiction, authority, limitations or rights; (d) without observance of procedure required by law; or (e) unsupported by substantial evidence. IC 7.1-3-19-11.
16. The ATC may also review a permittee’s application *de novo*. *Id.*
17. A local board’s recommendation is clearly erroneous when there is a lack of substantial evidence to support the recommendation. IC 7.1-3-19-11.
18. The Commission may decline to follow the recommendation of a local board where the recommendation is unsupported by substantial evidence. *Id.*
19. The Local Board denied this application without sufficient evidence to support a finding that this permit should not be issued.
20. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the finding of the Jennings County Local Alcoholic Beverage Board resulting in a 3-1 vote concerning the denial of the Application for permit number No. DL 40-23860 was not supported by substantial evidence and the Indiana Alcohol and Tobacco Commission should approve said Application. The Application filed by Wal-Mart Stores East, LP d/b/a Wal-Mart No. 1157

located at 2110 N. State Road 3, North Vernon, Indiana, for the Type 208 Alcohol and Tobacco Commission permit, No. DL 40-23860, was sufficient and said permit should be GRANTED.

DATED: \_\_\_\_\_

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E. Edward Dunsmore, Hearing Judge